IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5000 OF 1990

K. G. Bansode. ...Petitioner.

Vs.

The Union of India & Ors. ...Respondents.

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Mr. V. D. Surve for the Petitioner.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 8, 2005.

P.C.:

The Petitioner is at present working as the Store Keeper with the First Respondent at Directorate of N. C. C., Mumbai. By virtue of his service with the First Respondent, he was allotted Quarter No.1153/128, Type-B, Kane Nagar, Mumbai, in or about 6th May 1987. It is the case of the Petitioner that the marriage of his two brothers took place in the month of May 1988 and on account of the said marriage, he was on leave from 11th May 1988 to 20th May 1988. It is further case of the Petitioner that he requested one Pramod Nakhwa, who is also working in the Petitioner's office, to stay in his quarter and to take care of his belongings in his

absence during the said period. It appears that on 19th May 1988, the Petitioner's quarter was inspected by Mr.Hingoorani, Assistant Director of Estates, New Delhi, who made a report that one Ibrahim was in possession of the quarter. However, the Assistant Director did not take any acknowledgment from the person who alleged to have been found in possession of the quarter at the time of inspection.

2. On the basis of this inspection report, a show cause notice dated 21st July 1988 was issued by the Third Respondent to the Petitioner calling upon the Petitioner to show cause as to why licence of the public premises should not be cancelled. The Petitioner replied to the show cause notice, attended personal hearing and produced all relevant record and also filed his Written Statement in support of his case that he is staying in the quarter along with his family members and he has never sublet the quarter. It is the case of the Petitioner that on 18th December 1988 his quarter was again inspected by the representative of the Estate Manager and at that time, the Petitioner was found to be in the

premises along with his family members. It is alleged by the Petitioner that in spite of the subsequent inspection report, a memo was issued on 15th February 1989, directing the cancellation of the allotment of the quarter in favour of the Petitioner.

3. On the basis of the cancellation order, further proceedings were taken by the Estate Officer under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, calling upon the Petitioner as to why the order of eviction under the provisions of the said Act should not be passed against him. In response to the show cause notice, the Petitioner filed his detailed Written Statement. He also produced all the relevant documents along with the Written Statement. The Petitioner also enclosed letters of the occupants residing in the building as well as in or around the building confirming that the Petitioner is residing in the said quarter and has not sublet the said quarter. It appears that the Petitioner requested vide his letter dated 30th March 1990 seeking permission to examine certain witnesses and also sought permission to cross-examine Mr.Hingoorani who had submitted

inspection report. The Estate Officer rejected the application for the examination of the witnesses as well as well as the request of making Mr. Hingoorani available for the cross-examination and by his order dated 18th April 1990 directed eviction of the Petitioner from the quarter. The order of the Estate Officer was challenged by the Petitioner by filing an appeal being Miscellaneous Appeal No.77 of 1990 before the Principal Judge, City Civil Court, Bombay. The Learned Principal Judge was pleased to dismiss the appeal vide order dated 17th September 1990.

4. Mr.Surve, Learned Counsel appearing on behalf of the Petitioner took us through the relevant documents and the record. He submitted that there was clear violation of the principles of natural justice inasmuch as the Petitioner was not permitted to cross-examine the officer who had conducted the inspection and the denial of the permission amounted to a total failure of justice. He also brought to our notice that under Section 8, the Estate Officer was empowered to summon and enforce the attendance of any person. Therefore, the Learned Counsel contended that the

request of the Petitioner ought to have been accepted. Mr.Surve also made a grievance that the extensive documentary evidence produced by the Petitioner was not considered by the Estate Officer. We find considerable substance in the submission of learned Counsel. The enquiry was initiated solely on the basis of the report submitted by Mr.Hingoorani. It was a specific case of the Petitioner that no person by name Ibrahim was in occupation of the premises and at the time of inspection one Pramod Nakhwa who is the friend of the Petitioner was present in the premises. We do not see any justification on the part of the Estate Officer to deny simple request of the cross-examination of Mr.Hingoorani. It is also seen that the order has been passed mechanically without analysing the evidence on record. The respondents have not cared to reply to the petition. Thus averments made in the petition have gone totally uncontroverted. In our opinion, the entire order is vitiated by the non-observance of principles of natural justice.

4. We accordingly quash and set aside the impugned orders dated 18th April 1990 and 17th September 1990. Rule is

made absolute in terms of prayer clause (a)(ii) and (e).

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